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Court Jurisdiction
And Procedures In
Family Law

A Discussion Paper



Province of British Columbia
Ministry of Attorney General
Honourable Bud Smith, Q.C.
Attorney General





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A COMMITMENT TO JUSTICE
FOR BRITISH COLUMBIA FAMILIES

Disputes arising from family breakdown, child custody, access, support and property division can be emotionally charged and difficult for all concerned. British Columbia needs a system in which such disputes can be resolved quickly and fairly.

The discussion paper on court jurisdiction and procedures in family law matters will help to focus our vision. It offers solutions to resolve such disputes with a minimum of cost and with understanding and dignity for all involved.

A handwritten signature in cursive script that reads "Bud Smith". The ink is dark and the signature is fluid.

Honourable Bud Smith, Q.C.
Attorney General
November, 1989

Court Jurisdiction And Procedures In Family Law



A Discussion Paper

INTRODUCTION

The Justice Reform Committee was appointed by the Provincial Government in November, 1987 and presented its Report to the Attorney General in November, 1988. Its purpose was to recommend changes which would make the justice system of British Columbia more accessible, understandable, relevant and efficient. That aspect of the justice system commonly referred to as "Family Law" was recognized as an extremely important part of the Committee's mandate. As the Justice Reform Committee noted in its Report, *Access to Justice*:

Probably no other area of the law is as many-sided or as emotionally charged as the law which attempts to deal with the results of a broken marriage.

Family law governs the resolution of disputes which arise on family breakdown, including divorce; custody, access and support of children; spousal support; and the division of matrimonial property between spouses. It also encompasses other areas of the law relating to children, such as child protection and adoption.

The Committee made 37 recommendations directly related to family law in British Columbia and a number of others which touch the area tangentially. At the centre of the Committee's family law recommendations was a proposal intended to increase accessibility to the courts for litigants in family law matters and resolve the problems regarding the overlapping jurisdiction of the Supreme and Provincial Courts of British Columbia.

Following receipt of the Justice Reform Committee's Report, the Attorney General, The Honourable Bud Smith, Q.C. initiated an extensive review and consultation process preparatory to announcing the Government's response to the Report. This included a detailed review of the proposals in the Report for resolving the problems relating to overlapping court jurisdictions in family matters. In the course of this process, it became apparent that there was considerable dissension as to whether the proposals satisfactorily addressed these problems. Furthermore, questions were raised concerning the constitutional validity of a key element of the court model proposed in the Report. In consequence, the Attorney General directed the development of this Discussion Paper on court jurisdiction and procedures in family law cases.

This Paper is intended to provide an understanding of existing problems arising from the

overlapping jurisdiction of the courts and to stimulate debate on possible solutions. With this in mind, the Paper will elaborate upon the jurisdictional issues and propose a court model designed to ameliorate the problems associated with overlapping jurisdiction.

It should be noted that a number of the difficulties faced by family law litigants do not relate to overlapping court jurisdictions. These include geographical access to the courts and lack of understanding of sometimes complex court procedures, particularly where the litigant is not represented by legal counsel. These aspects are discussed further in this Paper and are addressed in the proposed court model.

The Paper also will review some of the existing family law programs as well as recent government initiatives in the family law area. Finally, there will be a discussion of the evaluation strategy in regard to the proposals contained in this Paper.

In reviewing issues relating to the jurisdiction of the courts and developing the proposed model, staff of the Ministry of Attorney General had the benefit of advice from a consultative committee composed of members of the judiciary representing the Supreme and Provincial Courts, family law practitioners and representatives of affected government Ministries. The assistance of these contributors and the donation of their time and talents is greatly appreciated.

In addressing the area of family law, the Justice Reform Committee faced the problem of an almost complete absence of statistical data to verify or quantify the anecdotal information presented to it. In an attempt to address this problem, Ministry staff undertook a study of court files in three court locations to provide additional statistical information regarding the jurisdictional issues. In addition, a survey of the opinions of Court Registry staff with respect to the problems faced by litigants was undertaken.

The Ministry invites written submissions from interested individuals and groups. They should be received by January 31, 1990 and addressed to:

**Legal Services Branch
3rd floor
609 Broughton Street
Victoria, B. C.
V8V 1X4**

THE JURISDICTIONAL PROBLEM

Under our Canadian Constitution, the Government of Canada appoints the judges of the Superior Courts which include the Supreme Court of British Columbia. The Province appoints judges of the Provincial Court of British Columbia. However, the provinces do not have authority to confer upon a Provincial Court Judge any jurisdiction to deal with matters which have been recognized as being solely within the jurisdiction of the Superior Courts.

The Provincial Court Judges hear a large volume of family law cases. When dealing with family matters, the Court is generally referred to as "Family Court". Family Court Judges hear cases dealing with maintenance, custody, access and guardianship under the Provincial *Family Relations Act*. They also deal with applications for variation of Provincial Court orders made under that Act and for enforcement of maintenance orders whether made by the Provincial Court or the Supreme Court. Additionally, Family Court judges hear child apprehension cases under the *Family and Child Service Act* and cases involving young offenders under the *Young Offenders Act*.

However, Family Court judges cannot deal with cases arising under the Federal *Divorce Act*, 1985 or matters involving the ownership of matrimonial property. These are matters which exclusively have come within the jurisdiction of the Superior Courts and, for the reason noted above, are beyond the jurisdiction of a Judge of the Provincial Family Court.

By contrast, a Supreme Court Judge can deal with all matters under the *Family Relations Act* including the division of matrimonial property and additionally can deal with applications for divorce and corollary relief under the *Divorce Act*, 1985.

In addition to the confusion caused to litigants, the Justice Reform Committee identified a number of practical and procedural problems resulting from the split constitutional responsibilities of the federal and provincial governments and the overlapping jurisdictions of the Supreme and Provincial Courts. These problems may be summarized as follows:

- Litigants who commence family proceedings in Provincial Court may find that only a partial resolution of the issues is possible, as only the

Supreme Court can resolve matrimonial property issues and grant divorces;

- While a Provincial Court judge may enforce a Supreme Court order, such as a maintenance order made in connection with a divorce, only a Supreme Court judge may vary such orders. Consequently, an application to enforce a maintenance order in Provincial Court can be delayed where a party before that Court asks that the maintenance be varied. Either party may learn for the first time that this must be pursued in Supreme Court and the party attempting to enforce an order must experience the resulting delay;
- Because the Supreme Court has concurrent jurisdiction with the Provincial Court, proceedings dealing with the same matters may be commenced in both courts resulting in a duplication of proceedings.

In developing possible solutions to address the problems identified above, consideration was given not only to the findings of the Justice Reform Committee Report but to historical information relating to the issue as well as relevant statistical information available through Court Services Branch. There follows a review of that process and a summary of the findings and conclusions.

SEEKING SOLUTIONS

Historical Overview

The problems of divided jurisdiction in family matters are well recognized and over the years have been the subject of much discussion. It has been noted earlier that the division of judicial jurisdiction in relation to family matters arises from the constitutional provision regarding the jurisdiction of the Superior Courts. It follows that a possible solution would be a constitutional amendment which allowed all family law matters to be heard and decided by provincially appointed judges.

In the past, this prospect has been the subject of discussion between the Federal and Provincial Governments. A Federal proposal for constitutional amendment was considered at the First Ministers' Conference on the Constitution held in 1980. Although supported by a majority of the provinces, including

British Columbia, the proposition did not receive the required provincial support and consequently did not proceed. There are no similar proposals for constitutional change currently being considered by the Federal and Provincial Governments.

Over the last two decades there have been numerous studies undertaken and reports prepared respecting family law and the most appropriate model for handling family cases. In 1974 in British Columbia, the Royal Commission on Family and Children's Law recommended a unified Family Court pilot project which was established and operated in the Municipalities of Surrey, Richmond and Delta from April, 1974 to March, 1977.

In 1976, the Law Reform Commission of Canada published a report recommending a unified Family Court model using federally appointed judges. Following publication of that report, the Federal Government entered into agreements with the provinces of Saskatchewan, Manitoba, Ontario and Newfoundland to establish three-year unified Family Court pilot projects with judges who were appointed to the courts jointly by the Federal and Provincial Governments. Although in three provinces the court model has been continued, it has not been expanded beyond the original pilot location. Manitoba subsequently established a family division at the Superior Court level, which deals with family matters in conjunction with the Provincial Court.

In the Provinces of New Brunswick and Prince Edward Island, the Supreme Court has exclusive jurisdiction in family matters. However, the population demographics and the geographical realities of those provinces are very different from British Columbia.

Recent developments in the Province of Ontario have seen proposals for the eventual establishment of a single court consisting of judges with full jurisdiction to hear all matters. Those are potential future developments which will require the cooperation of the Federal Government.

Whilst interesting and informative, a detailed review of the above developments did not reveal an existing court model which was readily compatible with the present needs and experience of this province.

Statistical Information

Whilst the problems associated with divided jurisdiction were known, there was little statistical

information available as to the manner in which these problems actually impacted on the court process. With a view to developing some statistical background information on this and other relevant issues, Court Services Branch of the Ministry of Attorney General, in connection with the preparation of this Paper, undertook a study of family case files at the Provincial and Supreme Court Registries in Vancouver and Victoria and the Provincial Court Registry in New Westminster. The purpose of the study was to obtain information on the following matters:

- To ascertain how often in practice problems arise when orders in respect of the same family matter are made in both the Family Court and the Supreme Court. As previously discussed, this is one of the problems associated with the overlapping jurisdictions of the courts in family matters.
- To develop some comparative data with respect to the percentage of litigants appearing without legal representation in the Family Court and the experience in Supreme Court. The Justice Reform Committee Report indicates that unrepresented litigants are generally more comfortable in Family Court because Supreme Court procedures presume that lawyers will be involved.
- To obtain an indication of the percentage of divorce applications in which there is no claim for corollary relief in respect to maintenance, custody or access.
- To obtain information as to how often in practice an application to Family Court to enforce a Supreme Court maintenance order is adjourned by reason of the respondent seeking to vary the order in the Supreme Court. It has been noted

earlier that this is a problem associated with the issue of overlapping court jurisdiction.

In regard to the issue of duplication of proceedings, there was no reference to this issue having arisen as a problem in any of the cases included in the study sample. Because the study was relying on the completeness and accuracy of the file information, it was felt that the result should be viewed as a general indicator rather than a conclusive finding. On this basis, the results would suggest that whilst the problem of duplication of proceedings may sometimes arise, in practice it is probably not a significant occurrence.

In respect to the comparative data, the study indicated that in approximately 57% of cases involving an application to the Provincial Court under the *Family Relations Act* neither the applicant nor the respondent was represented by a lawyer. This finding contrasted with the experience in Supreme Court where the study found that all applicants seeking relief under the *Family Relations Act* were legally represented. These latter applications would primarily relate to the division of matrimonial property. In the case of divorce applications in the Supreme Court, the study found that 69% of petitioners were represented by a lawyer.

The data clearly supported the propositions contained in the Justice Reform Committee Report that people who are not represented by lawyers generally utilize the Family Court. By virtue of its simpler process and summary procedures, Family Court is the forum where persons with limited resources seek an inexpensive resolution of their problems.

Court statistics for the year 1988 indicate that in excess of 12,300 divorce applications were filed in that year. (See fig. 1). However, many of those cases

Figure 1

FAMILY LAW ACTIVITY: 1988					
Region	PROVINCIAL COURT NEW CASES			SUPERIOR COURTS NEW CASES	
	Family Relations Act and Related Statutes	Family and Child Service Act	Total Court Hours	Divorce	Family Relations Act*
Vancouver Island	3,050	760	1,350	2,805	339
Vancouver	2,286	1,153	2,361	4,407	1,045
Fraser	4,753	949	2,562	2,186	429
Interior	2,273	590	1,384	1,819	367
Northern	1,637	607	1,206	1,125	169
PROVINCE	13,999	4,059	8,862	12,342	2,349

*NOTE: The figures shown for Supreme Court Family Relation Act (FRA) cases are estimates based on the civil file survey conducted in connection with an analysis of the Justice Reform Committee Report. For locations where a file survey was not done, the average proportion of FRA cases among civil files was used.

Figure 2

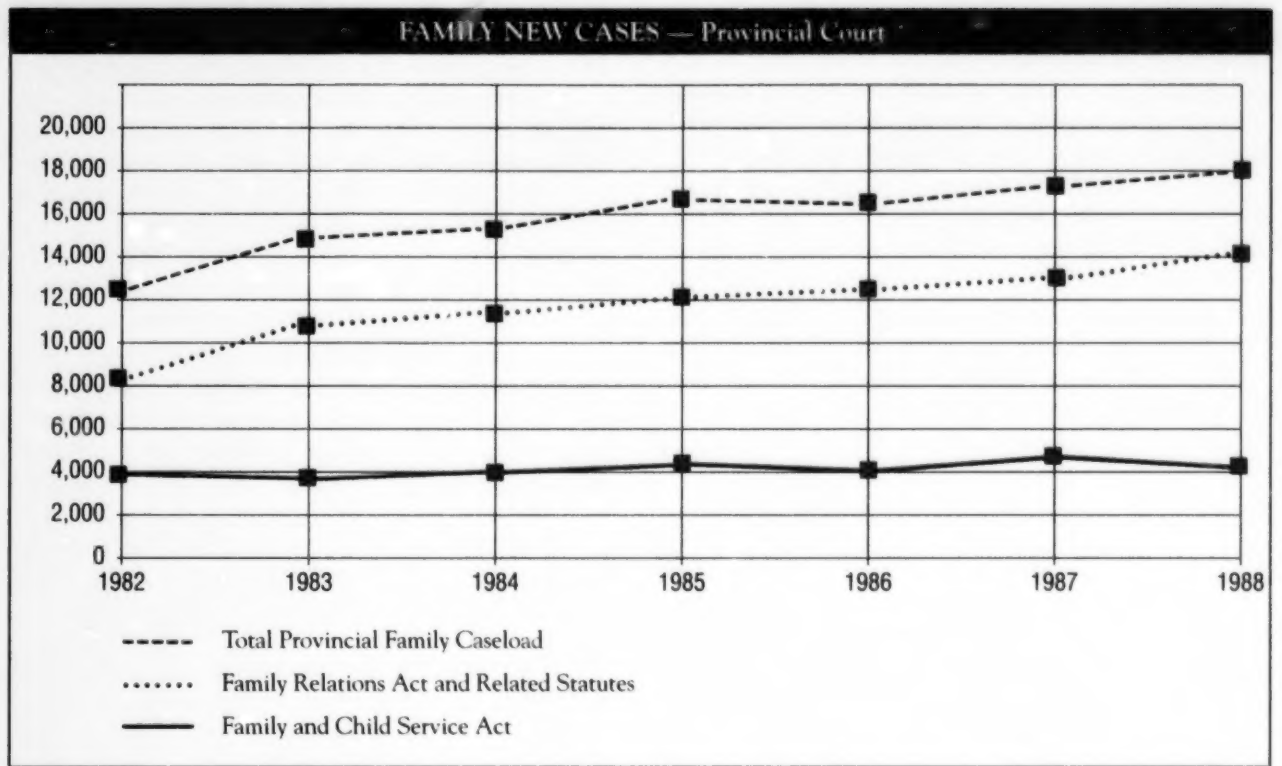
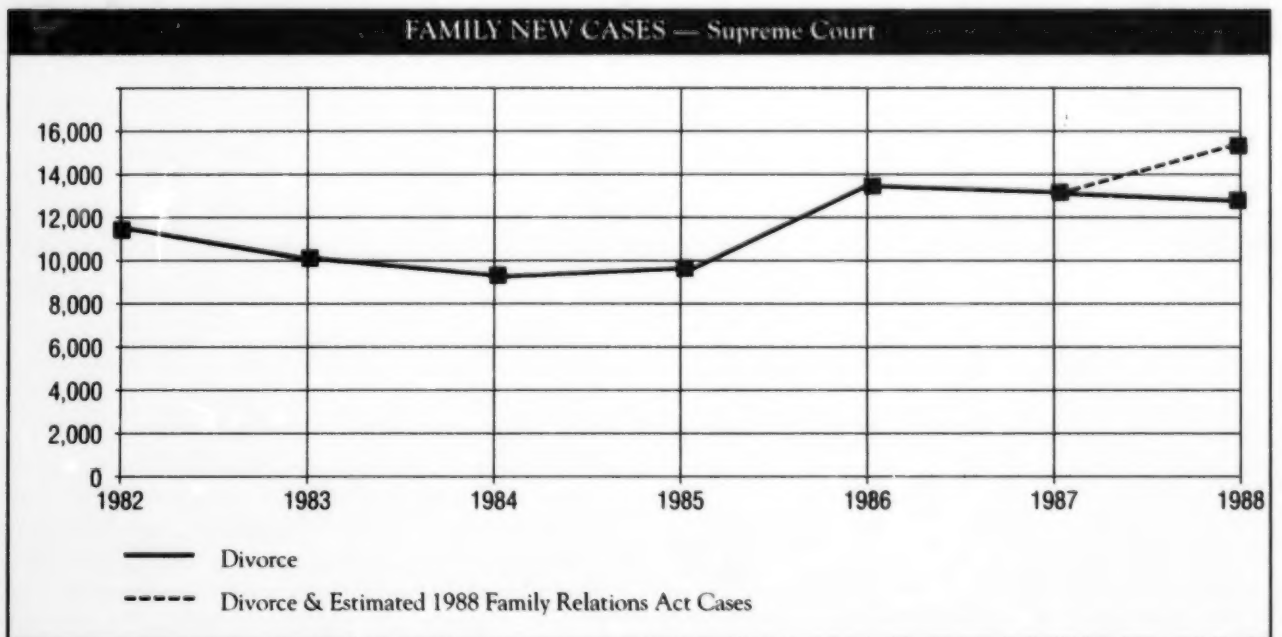


Figure 3



would not have resulted in a court hearing, the reason being that the *Divorce Act, 1985* and the Rules of Court enable undefended divorce actions to be finalized, in appropriate cases, through an administrative process without the necessity of the petitioner or counsel appearing. This would particularly be the case where the petitioner was simply seeking a divorce without corollary relief, that is to say, maintenance, custody or access.

The study results indicated that 58% of the divorce applications reviewed did not include a claim for corollary relief. Of these cases, only 3% resulted in an actual court appearance leading to a final court order. In cases where corollary relief was claimed, only 3% of those cases involved a court hearing for an interim court order and only 7% resulted in a court hearing for a final order. Clearly a high level of settlement is achieved in these cases, enabling the matter to be finalized without the necessity of a court hearing.

The study found that only 4% of the cases involving an application to Provincial Court to enforce a Supreme Court maintenance order indicated an adjournment of the proceedings to enable the respondent to apply to the Supreme Court for a variation. Again, this is a case where the study findings were dependent upon information recorded on the court file. For this reason, the result should be viewed as a general indicator only of the incidence of this problem. Subject to that qualification, the results suggest that in practice, this is not a significant issue.

In addition to the information, general statistics were collated from Court Services' records. Figure 1 shows new family cases filed in Provincial Court and Supreme Court in the five regions of the province during the year 1988.

To provide a historical context, figure 2 indicates family caseloads in the Provincial Court and figure 3 the Supreme Court, over the years 1982 to 1988. These caseload statistics illustrate the increasing volume of cases over the years reflecting the incidence of marital breakdown.

Related Issues

Understanding the Court Process

While the problems associated with overlapping court jurisdiction undoubtedly exist, the results of the Court Services study suggest that these problems

should not be overstated. There are other more general concerns respecting the Court system identified in the Justice Reform Committee Report which are of equal if not greater significance. These concerns are referred to in the following terms:

The Committee heard from people whose marriage break-ups had led them through the justice system and who felt badly served. They found the system costly and complex and sometimes insensitive to their needs. There also were criticisms from volunteer groups and others with experience in Family Court who feel that the sheer volume of the Court's workload results in less than perfect justice for many.

It seems that people who use the Court system, particularly unrepresented litigants, often do not understand the Court process or how the justice system works. Overlapping Court jurisdiction is only part of the confusion. It is apparent that litigants often may be unclear as to what is required and the procedures to be followed, in order for their case to proceed. The unrepresented litigant may appear at Court without the necessary supporting documents and records and often this will result in delay in the case being heard and contribute to the frustration of the litigant.

Prospective litigants may also be unaware of available referral and support services and programs, such as the Family Court Counsellor service, legal aid, and the Family Maintenance Enforcement Program. It is important that litigants be aware of the services available as early contact with appropriate support services often can provide needed assistance and the opportunity to explore options other than court action for resolving their case.

It must also be recognized, as the Justice Reform Committee noted, that different kinds of cases demand different treatment. Some cases will be relatively straightforward whilst others may involve complex financial and legal issues. Procedures in Provincial Court are intended to be relatively straightforward, allowing litigants to appear without legal counsel. Simple cases can be resolved relatively quickly and cheaply in that forum. Supreme Court procedures, on the other hand, are governed by a complex set of rules dealing with all aspects of a case. More complex cases often require these formalized and comprehensive procedures. The Justice Reform Committee described the advantages and disadvan-

tages of these different court procedures in the following terms:

Family Court aims at simplicity in its procedures and forms. There is very little paperwork involved in bringing or defending a Family Court application.

Supreme Court on the other hand is formal in its procedures and leans heavily toward the written word. A family case in Supreme Court is treated very much the same as any other civil suit and is subject to the same general rules.

People who are not represented by lawyers are generally more comfortable in Family Court. There, the forms are of the fill-in-the-blank variety and the Judges are used to dealing with people acting on their own behalf.

Supreme Court procedures presume that lawyers will be involved. To begin with, someone must produce the 'pleadings' – the documents that set out the essentials of the claim and the defence – and these can be quite technical.

The report goes on to note the following further distinctions between the Provincial and Supreme Courts:

Perhaps the feature which most distinguishes Supreme Court from Family Court is its range of pre-trial "discovery" procedures. These are the procedures that each side can use to learn about the other side's case so that they can make rational decisions, but they are not easily managed by someone who is not legally trained. The more complex discovery procedures are often unnecessary where the family's finances are simple.

Litigants certainly may represent themselves in Supreme Court but they will find it difficult. It is very much a lawyers' forum.

The result of all these procedural differences is that cases involving significant amounts of money usually end up in Supreme Court and those without, in Family Court. Different kinds of cases demand different treatment.

There must be a place where people with very little money at stake can go for an inexpensive resolution to their problems. At the same time, people with complex financial arrangements need a court where they can thoroughly explore all of the relevant issues.

Later in this Paper a court model is proposed for family matters. That model will reflect the continuing need to provide "a place where people with very little money at stake can go for an inexpensive resolution to their problems." The model will also contain specific features designed to assist the litigant, particularly the unrepresented litigant, in both understanding the process and dealing with the court system.

Geographical Access

A factor of particular concern in British Columbia and those other Canadian provinces in which the population is spread over vast areas is geographical access to the courts. While Provincial Court facilities are numerous and accessible to those in smaller population areas, Supreme Court facilities are limited to larger centres. Where a matter can only be dealt with in Supreme Court, those from smaller centres must travel to Supreme Court to seek the appropriate relief. Thus, making more remedies available in Provincial Court facilities increases geographical access. The model being proposed in this Paper seeks to achieve this.

Conclusions

In searching for possible solutions to the jurisdictional problem, there appeared to be two possible directions which could be followed. Firstly, consideration could be given to a major restructuring of the present court system by moving to a one-tier court model for family matters, at the Supreme Court level. Alternatively, solutions could be sought through jurisdictional, administrative and procedural improvements and reforms within the existing two-tier Supreme and Provincial Court system. It is the latter approach which has been adopted in this discussion Paper based on the the following considerations:

- Unified Family Court projects tried here and elsewhere have had mixed success and there does not appear to be an existing model which is readily adaptable to our present court system.
- A review of the statistical information confirms the importance of the Provincial Court within the present court system. It is apparent that a majority of maintenance, custody and access cases are handled in the Family Court and that many of those litigants are not represented by

legal counsel. In the context of contemplating a one-tier system in the Supreme Court, the practical realities of attempting to transfer the substantial Family Court caseload to that court clearly was a matter for careful consideration.

- An assessment of the magnitude of the problems associated with overlapping court jurisdictions, based upon the Court Services study results, suggests that although these problems exist in practice they arise relatively infrequently.
- The geographical accessibility of the Family Court, its simplified procedures and forms and the availability of support services combine to make the court a comfortable forum for the unrepresented litigant and others who have limited resources and seek an inexpensive resolution to their problems. These were characteristics of the Family Court which the Justice Reform Committee recognized as being very important. It should perhaps be noted that the Committee reached these conclusions following public hearings in nine communities throughout the province at which it heard 175 presentations and received 200 briefs.

A PROPOSED COURT MODEL FOR FAMILY MATTERS

The following model incorporates improvements and reforms to the existing two-tier Supreme and Provincial Court system with the objective of resolving or ameliorating the problems associated with overlapping court jurisdiction in family matters. Apart from addressing these specific issues, it is anticipated that the suggested improvements and reforms will also address some of the broader concerns respecting the court system, discussed earlier in this Paper. In this way, it is intended that the proposed model will provide benefits to all prospective family law litigants who unfortunately must have recourse to the court to resolve their differences. It is proposed that the model initially be established as a pilot project in a suitable region of the province, so that the effectiveness of the proposed changes and the attainment of expected goals and objectives can be properly evaluated. Following that evaluation, consideration will be given to phasing in the model province-wide.

The following are the main features of the proposed model:

THE PROVINCIAL COURT REGISTRY

The Provincial Court would retain its existing jurisdiction in family matters. Additionally, those Provincial Court Registries included in the project would be designated a Supreme Court Registry for family matters. This will enable litigants to file Supreme Court family proceedings at the local Provincial Court Registry, particularly divorce petitions and applications respecting the division of matrimonial property under the *Family Relations Act*.

Consequent to the above designation, an applicant filing an application in Provincial Court in relation to maintenance, custody or access could decide whether he or she wished their case to proceed in Provincial Court or in Supreme Court.

INTERLOCUTORY APPLICATIONS

In relation to Supreme Court proceedings, the availability of interlocutory relief is of particular importance. The ability to apply to the court for interim orders respecting such matters as maintenance and custody preserves and protects the interests of the parties pending the trial of the action. Furthermore, these interim applications often lead to the ultimate settlement of the issues without the need for a trial.

Having provided the litigant with the opportunity of filing Supreme Court family proceedings in the Designated Registry, it may prove a limited benefit if the means for obtaining interlocutory relief is not also available. Therefore, it is proposed that the Provincial Court Judges in the Designated Registries be given the powers and jurisdiction to grant interlocutory relief in family matters similar to the powers and jurisdiction of a Master of the Supreme Court. This would enable an applicant whose Supreme Court application filed in the Designated Registry included, for example, a claim for custody of a child, to apply to the Provincial Court Judge for an interim custody order prior to trial.

INTEGRATION OF COURT ADMINISTRATION

The changes proposed so far will enable a litigant to file Supreme Court proceedings in the Designated

Registry and to apply at that Registry for interlocutory relief in appropriate cases. However, unless the issues in dispute are resolved by the parties, those proceedings, at some stage, will have to be transferred to a Supreme Court location for trial before a Judge of that Court. The manner in which this aspect is handled is crucial to the effectiveness of the model.

In regard to this aspect, it is proposed that the pilot model would operate as follows. There would be a central Supreme Court location serving a number of Designated Registries which geographically and administratively can function on an integrated basis. The court administration of each Designated Registry would be integrated with that of the central Supreme Court. This integration will enable the efficient and expeditious transfer of case information and process between registries, including the transfer of files and file information when required, the setting of hearing and trial dates and the coordination of support services.

COURT RULES

The Supreme Court Rules are both detailed and comprehensive. These formal procedures in Supreme Court apply as much to a family case as to a complicated civil action. Supreme Court procedures presume that lawyers will be involved and they are not easily understood or managed by litigants representing themselves.

It is proposed that a set of procedural rules be developed for Supreme Court applications filed in Designated Registries. These rules should permit proceedings in the Designated Registry to be heard summarily in a manner similar to the procedures presently followed in the Provincial Court.

INTAKE PROCEDURES

It has been noted earlier that many family law litigants find the court system complex and confusing. Family Court Counsellors sometimes assist litigants on these matters but do so in relation to conciliation services as they are not part of the court staff. It is proposed that there be a new position established in the registries of the pilot project, to be known as a "Court Intake Officer". The duties of the Court Intake Officer would be to:

- Respond to telephone inquiries on court processes;
- Interview a prospective litigant for purposes of providing appropriate information or referral;
- Provide basic information on the jurisdiction of the two levels of court;
- Provide information on processes and procedures at Provincial Court and Supreme Court, including types of documents required and service requirements;
- Assist a prospective litigant in completing court documents (but the Officer will not assume any responsibility for drawing or preparing legal documents);
- Advise a prospective litigant of the availability of the Family Court Counsellor program and provide informational pamphlets respecting the program's conciliation services and where appropriate provide information on other support and referral services available, for example, legal aid lawyer referral, Social Services and Housing services and the Family Maintenance Enforcement Program;
- At the officer's discretion, assist a prospective litigant to make an appointment with the Family Court Counsellor program or other appropriate referral;
- Determine whether a prospective litigant has previously initiated court action so that court file information can be consolidated.

The Court Intake Officer is viewed primarily as a means of providing support and information to family law litigants. It is seen as a method of humanizing an individual's initial interaction with the court system and of making subsequent involvement with the court less intimidating. In pursuing these objectives, it will be important for the Court Intake Officer to avoid assuming responsibilities which could be viewed as providing legal advice.

An important part of the Court Intake Officer's role will be to provide information concerning support services. This is particularly true in regard to conciliation services. Early contact with these services can often lead to the resolution of family problems or disputes through mediation rather than court action. The Officer will be in a position to provide information regarding the Family Court Counsellor Program and, where requested, assist the prospective litigant to obtain an appointment with a Family Court Counsellor.

DUTY COUNSEL

In connection with the development of this court model, it has been suggested that a lawyer should be available at the court to assist and advise unrepresented litigants. It should be noted that Legal Services Society also has this aspect under consideration in respect to its legal aid mandate.

For the purposes of the pilot project, it is proposed to arrange for Duty Counsel to be available at one of the Designated Registry locations. This will enable an evaluation to be made of the role of Duty Counsel in the court model. Duty counsel will:

- Provide legal advice to family law litigants who may request assistance and, where necessary, refer them to appropriate legal resources such as legal aid;
- At the request of the Court Intake Officer, be available to provide advice and guidance to the Officer in connection with that Officer's functions.

SUMMARY OF THE ANTICIPATED BENEFITS OF THE PROPOSED MODEL

- Designated Registries will provide litigants with greater accessibility to the Supreme Court. This can be of benefit to any litigant but may be of particular advantage to litigants who reside in the more remote areas of the Province.
- Litigants who have previously taken proceedings in Provincial Court for maintenance, custody or access and later seek remedies respecting divorce and/or the division of matrimonial property which are only available in the Supreme Court will be able to file the Supreme Court proceedings in the local Designated Registry.
- Litigants who wish to bring proceedings in the Supreme Court will have the convenience of being able to file the proceedings in the local Designated Registry. Furthermore, if the relief sought includes, for example, maintenance, custody or access, the litigant will have the option of bringing summary proceedings in the Designated Registry for an interlocutory (interim) order pending the trial. These interim proceedings can often result in a settlement of the issues prior to trial.

- Litigants representing themselves will be assisted by the Intake Officer in better understanding the court system and proceedings. This responds to one of the important concerns identified in the Justice Reform Committee Report and discussed earlier in this Part.
- Information respecting support services, such as the Family Court Counsellor Program, and assistance in contacting these services will be available to litigants through the Court Intake Officer.
- In respect to an application to Provincial Court to enforce a Supreme Court maintenance order where the Respondent seeks a variation of the order, assistance will be available in the Court. The Court Intake Officer will be able to advise the Respondent of the process for applying to Supreme Court. Where appropriate, referrals can be made to legal aid or other services. The application to vary can be filed in the Designated Registry. Dates for hearing the application at the Supreme Court can be canvassed and finalized through the Designated Registry.
- The integration and coordination of court administration will ensure that in those instances when a case proceeds to Supreme Court for trial, all relevant file information in the Designated Registry is transferred to the Supreme Court.

To use a modern term, a primary objective of the proposed model is to provide a more "user friendly" court environment for the family law litigant and greater efficiency in the handling of family matters.

Needless to say, none of these proposals precludes a litigant from applying directly to the Supreme Court in accordance with the Supreme Court Rules respecting any family matter within the jurisdiction of that Court.

Additional Discussion Items

In the course of developing this Paper, the following matters were considered and although not included in the proposed model they are raised here for the purpose of inviting further discussion and comments.

Reference on Maintenance Variation Proceedings

A problem earlier identified with overlapping jurisdiction is the case where an application is made

to Provincial Court to enforce a Supreme Court maintenance order and the Respondent seeks a variation order. The variation application must be made to the Supreme Court. A possible alternate approach would be to allow the Provincial Court Judges discretion, with the consent of the parties, to hear the variation application and make a provisional determination. The provisional variation order would subsequently be referred to a Supreme Court Judge for confirmation. That might be achieved without the attendance of the parties unless one or the other of the parties wished to contest the confirmation. If this alternate option is to have the desired result of saving time and expense, it must be presumed that the parties, having consented to the provisional hearing in Provincial Court, will generally accept the provisional determination and not contest the confirmation. There are divergent opinions as to whether, in practice, that would prove to be the case.

Differences in Federal and Provincial Custody and Support Provisions

There are differences between Federal and Provincial legislation on the above matters. For example, under the Provincial *Family Relations Act*, a parent's responsibility to support a child ceases upon the child attaining the age of nineteen years (the age of majority). Under the Federal *Divorce Act*, 1985, the support obligation may be ongoing in certain circumstances, for example, illness or disability. Other differences relate to the criteria to be considered by the court in maintenance and custody matters. It has been suggested that it would be desirable, in consultation with the federal authorities, to seek ways of harmonizing Federal and Provincial legislation on these aspects.

RECENT GOVERNMENT INITIATIVES AND EXISTING SERVICES

There have been a number of recent government initiatives designed to improve the court system and services available to litigants. Some of these initiatives specifically relate to the implementation of the Justice Reform Committee Report. It is anticipated that these developments will result in greater accessibility to the courts and the enhancement of existing

services to litigants in family matters.

Recent initiatives include:

- The merger of the Supreme and County Courts into one Supreme Court of British Columbia by July 1, 1990. The merged Court will provide resident Supreme Court Judges in nine regions of the province and will provide increased access to the Supreme Court for those living outside the Lower Mainland.
- The availability of legal aid will be increased by using a more flexible financial eligibility test, effective April 1, 1990.
- The recently established Family Maintenance Enforcement Program which enables maintenance recipients to file their maintenance order on the Program for enforcement. The Program monitors payments under the order on behalf of the recipient and initiates enforcement action in the event of default.
- The recently established Family Maintenance Program of the Ministry of Social Services and Housing through which legal representation is provided to maintenance applicants who are in receipt of income assistance under the *Guaranteed Available Income for Need Act*.

Existing government services provided to persons in regard to family matters include:

- The Family Court Counsellor program of the Ministry of Solicitor General, which provides conciliation services, extensively to Family Court and also to the Supreme Court;
- Emergency legal counsel services to persons in situations of family violence;
- The appointment of Family Advocates by the Ministry of Attorney General to represent the interests of children in appropriate cases;
- Legal services to persons seeking a provisional maintenance order under the Reciprocal Enforcement of Maintenance Orders provisions, where the respondent spouse is resident in a reciprocating jurisdiction;
- The Maintenance and Enforcement Information Search (MEIS) unit located in the Ministry of Attorney General which provides tracing assistance to persons seeking to obtain or enforce maintenance, custody and access orders, through access to provincial and federal data sources.

PROPOSED EVALUATION STRATEGY

The various program and legislative initiatives taken in recent years have improved services available to individuals caught up in family law disputes. The Justice Reform Committee identified a number of remaining problems with the structure of the courts, the operation of the legislation and the services available to the public. In response to the Committee Report, Government has introduced a number of further amendments to the legislation and rules governing family law procedures and is making additional resources available to improve access to the courts. If the proposals contained in this discussion Paper are proceeded with, further legislative and rule changes will be necessary.

One of the problems faced by the Justice Reform Committee was the lack of statistical information to determine the extent of the problems identified. The statistical analysis undertaken for this Paper helped to clarify the extent of the problem created by the overlapping jurisdiction of the courts.

The changes proposed in this discussion Paper are intended to address those problems and to improve services to the public. It is being proposed that the model be instituted on a pilot basis in a small number of registries and be subject to a thorough monitoring and evaluation process. The proposed evaluation would include:

- The collection of more detailed statistical information than is now available on caseloads, case profiles and the reasons for delays in matters being heard both in the pilot and a limited number of non-pilot locations, in order to increase understanding of the operation of the courts;
- An assessment at the study sites of the impact of legislative changes resulting from the Government's response to the Justice Reform Committee;
- An assessment of the effectiveness of the proposed model on an ongoing basis so that necessary adjustments can be considered to improve services to the public; and
- A determination of the desirability of implementing the model, or a variation of the model, on a Province-wide basis.

The proposed court model addresses the problems of overlapping court jurisdiction and proposes innovations to the court system designed to assist the family law litigant. It is recognized that further improvements to the services provided to persons involved in family breakdown may be necessary and possible. It is intended that the evaluation strategy proposed above will allow government to consider future initiatives and options in the area of family law, with the benefit of information not previously available.

CONCLUDING COMMENTS

The proposals set out in some detail above represent a possible approach being considered by government to address the problems of overlapping court jurisdiction in family matters. This Paper is directed to the public, the professions and interested groups for the purpose of obtaining comments and responses that will be of assistance in finalizing government policy. Your participation and support in this process will be appreciated. Submissions should be received by January 31, 1990 and addressed to:

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